THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4806 OF 2007

DATED 26th MARCH, 2007

Between

Guda Damodar Rao and others.

... Petitioners

AND

The Joint Collector-II, Ranga Reddy District at Khairatabad, Hyderabad and others.

.... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4806 OF 2007

ORDER:

This writ petition is filed assailing the order of the first respondent, dated 09.01.2007 in case No.D5/4495/05, seeking a writ of Certiorari to quash the same.

The short fact of the matter is as follows. The father of the petitioners, Guda Narsimha Rao and Guda Ramanuja Rao were joint owners of land admeasuring Acs.11.31 guntas in survey No.101 situated at Porandla Village of Maheswaram Mandal in Ranga Reddy District. During their lifetime, they divided the property and the father of the petitioners got survey No.101 as his share. Respondents 2 to 4 herein are protected tenants in respect of the said land. There was a compromise between the petitioners and the respondents 2 to 4. An extent of Acs.6.00 guntas in survey No.101 was given to the protected tenants, who in turn surrendered their interest in favour of the petitioners under Section 19(1) of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (the Tenancy Act, for brevity). The same was also ratified by the Mandal Revenue Officer (MRO), by proceedings, dated 08.06.2005. The protected tenants were also issued certificate by Revenue Divisional Officer (RDO) under Section 38-B of the Tenancy Act, by proceedings, dated 16.09.2005. Nonetheless, respondents 2 to 4 filed a Revision under Section 9 of

the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (ROR Act, for brevity), challenging the proceedings of the MRO correcting the entries in possession and pattadar columns. Initially, the same was dismissed. Subsequently, they filed restoration petition claiming correction for the year 2004-2005. When the matter was pending before the first respondent, respondents 5 and 6 got impleaded claiming that they are successors of late Ramanuja Rao. The petitioners allege that Ramanuja Rao had three sons, namely, G.Narsing Rao, G.Narsimha Rao and Sri Ram Pandith, and respondents 5 and 6 alleged that there were no male heirs of Ramanuja Rao. The first respondent, having considered these aspects, came to the conclusion that the question of granting succession assumes complex dimension due to passage of time and can only be decided by civil Court. Accordingly, the first respondent set aside the order of the MRO bearing proceedings No.D/1543/05, dated 08.06.2005, whereunder the petitioners herein were recognized as successors to the land in survey No.101, admeasuring Acs.11.31 guntas and ordered to effect changes in revenue records while deleting the name of late G.Ramanuja Rao.

Learned counsel for the petitioners submits that Revision under Section 9 of the ROR Act is not maintainable against an order under Section 4 of the ROR Act, and therefore, the impugned order is void as it is without jurisdiction. He, secondly, complains that the MRO granted succession to the petitioners, which was not subject matter of the Revision before the Joint Collector but without application of mind, the same was set aside. He would urge that respondents 2 to 4 herein have already surrendered the tenancy rights under Section 19 of the Tenancy Act and obtained ownership certificate under Section 38-B of the Tenancy Act, which was recognized by the proceedings of even number and even date, and therefore, the impugned order is illegal.

The submission that a Revision would not lie under Section 9 of the ROR Act against an order under Section 4 of the ROR Act is wholly misconceived. Sections 4 and 5(1) and (2) of the ROR Act are relevant and read as under.

> **4. Acquisition of rights to be intimated:-** (1) Any person acquiring by succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right, to the Mandal Revefnue Officer within ninety days from the date of such acquistion, and the said Mandal revenue Officer shall give or send a written acknowledgement of the receipt of such intimation to the

person making it:

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other persons having charge of his property shall intimate the fact of such acquisition to the Mandal Revenue Officer.

Explanation I:- The right mentioned above shall include a mortgagee without possession and a right determined by Civil court.

Explanation II:- A person in whose favour a mortgage is discharged or extinguished, or a lease is determined, acquires a right within the meaning of this section.

(2) Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908) every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale, mortgage, gift, lease or otherwise shall intimate the Mandal Revenue Officer of the Mandal in which the property is situate of such transaction.

5. Amendment and updating of Record of Rights:- (1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the Mandal Revenue Officer shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefore and shall carryout the amendment in the record of rights in accordance with such determination:

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the Mandal Revenue Officer has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the Mandal Revenue Officer shall carry out the said amendment in the record of rights.

Analyzing the above provisions, it becomes clear that Section 4 enables a person acquiring the agricultural lands by succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise shall have to intimate in writing the acquisition of such right to MRO (recording authority) within ninety days. After receiving such application under Section 4(1) of the ROR Act, the MRO has to conduct enquiry and pass necessary orders for amendment to be effected in the record of rights. That is the purport of sub-sections (1) and (2) of Section 5 of the ROR Act. Section 4 of the ROR Act is only enabling provision and every application made under Section 4 of the ROR Act is dealt with under Section 5 of the ROR Act.

A copy of the Revision (described as Appeal) filed by respondents 2 to 4 is annexed to the writ petition. While alleging that they are absolute owners and possessors of land in survey No.101, admeasuring Acs.11.02 guntas as protected tenants as well as purchased from Ramanuja Rao, S/o Narsinga Rao, they complained that the petitioners herein colluded with MRO and got their names deleted from the possessor column and entered the names of the petitioners, that when they approached the MRO for copies of Pahanis they were not given and sought to rectify the alleged illegal entries in favour of the petitioners by duly deleting the names. From this, it is clear that respondents 2 to 4 asked for rectification of the entries, which were ordered by proceedings No.D/1543/05, dated 08.06.2005 by the MRO, a copy of this proceeding also is annexed to the writ petition, and therefore, when the Joint Collector set aside the proceedings, dated 08.06.2005, necessarily the entries made in favour of the petitioners have to go.

The Joint Collector also considered the revenue records and found that the entire extent of land in survey No.101 was recorded in the name of late Ramanuja Rao and petitioners herein were recognized as successors in whose favour mutation was granted. In that context, the Joint Collector observed that Ramanuja Rao passed away several years ago, and therefore, effecting mutation long after the demise of pattadar is not in order as determination of succession assumes complex dimensions in such an event. Thus, the succession granted to the petitioners by separate proceedings, dated 08.06.2005, was also found fault with while disposing of the Revision petition observing that the recording authority can take necessary action after the civil Court decides the issue.

In **Syed Abdul Majeed v Joint Collector-II, Ranga Reddy District**[1] this Court has considered the question of authority, power or jurisdiction of the MRO to decide the question of succession purportedly under Section 40 of the Tenancy Act. After considering the various provisions of the Tenancy Act and the relevant A.P.(Telangana Area) Tenancy and Agricultural Land Rules, 1950, this Court held as under.

> Reading Section 40 of the Act and the Tenancy Rules together, it must be held that though under Section 40 of the Act, Tahsildar has no power to decide questions of succession to the protected tenancy, in the event of acquisition of rights, Tahsildar can conduct verification under Rule 14 of the Rules and order amendments in the register of mutations. Such a procedure is also contemplated under Section 4 of the A.P. Rights in Land and Pattadar Pass Book

Act, 1971 and Rule 18 of the A.P. Rights in Land and Pattadar Pass Book Rules, 1989. The enquiry contemplated for amending mutation in the event of acquisition of rights either by survivorship or succession is altogether different from adjudicating the question of succession. Even while dealing with the application for recording for amendment of entries in the mutation register, if there is a dispute by the applicant, the MRO should relegate such party to the civil court.

This Court in an unreported judgment in W.P.No.7430 of 2000 held that the question as to who are the legal heirs of a deceased protected tenant has to be decided by a competent court of civil jurisdiction. A similar view was expressed in another unreported judgment in W.P. No.7018 of 2000. The decisions cited by the learned Counsel for the petitioner nowhere lay down that the Tahsildar/MRO is conferred with the power to decide questions of succession. By the very nature of enquiry involved in such application, the Tahsildar/MRO is not competent to decide questions of succession.

Therefore, grant of succession by the MRO was not correct.

In the result, for the above reasons, the writ petition is misconceived and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

.03.2007.
pln

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[1] 2006(5) ALD 348 = 2006(5) ALT 754